city may be estopped from asserting irregularities in the exercise of a power as distinguished from entire absence of power. *Marcy* v. *Oswege*, 92 U. S. 637. And it is sometimes held that there is an estoppel against a municipal corporation when it has permitted long adverse user of public property and large expenditures thereon. *Paine Co.* v. *Oshkosh*, 89 Wis. 449. But see *London Bank* v. *Oakland*, 90 Fed. 691, 701. Even in the case of utter lack of capacity the only objection to estopping the city would seem to be the necessity of saving municipalities from the danger of the misconduct of corrupt officials. But see *Schumm* v. *Seymour*, 24 N. J. Eq. 143, 154. This objection failing where it is sought to hold the outsider, it would seem that the estoppel should exist in the circumstances of the principal case. See *New York* v. *Sonneborn*, 113 N. Y. 423, 426, 21 N. E. 121; *Buffalo* v. *Balcom*, 134 N. Y. 532, 536, 32 N. E. 7, 8.

NEGLIGENCE — DUTY OF CARE — BUSINESS CUSTOM AS A TEST OF DUE CARE. — The plaintiff, an employee of the defendant, was injured while working on one of the defendant's cars. The defendant requested a charge that it need exercise only the usual care of those engaged in the same business. *Held*, that the refusal so to charge was error. *Canadian Northern Ry. Co.* v. *Senske*, 201 Fed. 637 (C. C. A., Eighth Circ.).

In this doctrine the court has followed the language used in several other decisions in the federal courts. See *Shankweiler* v. *Baltimore & Ohio R. Co.*, 148 Fed. 195, 197; *Grand Trunk Ry. Co.* v. *Ives*, 144 U. S. 408, 416, 12 Sup. Ct. 679, 682. But the decisions scarcely bear out the conclusion that this is the sole test for the jury. But see *Chicago Great Western Ry. Co.* v. *Minneapolis, etc. Ry. Co.*, 176 Fed. 237, 242. The care others exercise should at most be only evidence of the care that a reasonably prudent man would exercise under the circumstances. See 14 HARV. L. REV. 156.

NUISANCE — RECOVERY OF DAMAGES — RECOVERY OF DAMAGES BY ONE HAVING NO RIGHT IN THE PROPERTY AFFECTED. — The defendant constructed and maintained a pond which emitted noxious air, causing the death of the plaintiff's intestate, while the latter was rightfully living in the house of his father. *Held*, that the defendant is liable for causing the death of the plaintiff's intestate by maintaining a nuisance. *Hosmer* v. *Republic Iron & Steel Co.*, 60 So. 801 (Ala.).

The early law imposed absolute liability for injury caused, without regard to the fault of the actor. As to damage done to realty this conception has, to a large extent, persisted. See article by Professor BOHLEN, 59 U. OF PA. L. REV. 298, 309, 310. Private nuisance partook of this nature, since it consisted of an injury to land or to the enjoyment or dominion of the possessor. See 3 BL. COMM., 216; COOLEY, TORTS, 3 ed., 1174. Consequently the fault of the person responsible for the nuisance was regarded as immaterial. See 59 U. OF PA. L. REV. 313, 314. It has long been recognized, however, that there is no liability for injuries purely personal, except in so far as there is fault on the part of the actor. See HOLMES, COMMON LAW, 88–90. In allowing an action on the case for nuisance by one who has no legal estate or possessory interest in land the court is historically wrong. Moreover, it is running counter to modern ideas of justice which discountenance tort liability without culpability unless there are special demands of social expediency. Here, on the contrary, there is the practical objection, which has had weight in the law, that the defendant is thereby subjected to a multiplicity of actions. See *Proprietors of Quincy Canal* v. *Newcomb*, 7 Met. (Mass.) 276, 283. The weight of authority is against the principal case. *McCalla* v. *Louisville & Nashville R. Co.*, 163 Ala. 107, 50 So. 971; *Ellis* v. *Kansas City, St. J. & C. B. R. Co.*, 63 Mo. 131; *Hughes* v. *Auburn*, 161 N. Y. 96, 55 N. E. 389; *Holly* v. *Boston Gas Light Co.*, 8 Gray (Mass.) 123. (Specifically placed on the ground that there was no negligence.) *Cf.*